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HOUSE BILL 1106

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

EARLENE ROBERTS

AN ACT

RELATING TO SUBDIVISIONS; INCREASING COUNTY AUTHORITY TO  
REGULATE CERTAIN WATER AND SAFETY PROVISIONS NECESSARY FOR  
SUBDIVISION PLAT APPROVAL; AMENDING SECTIONS OF THE NEW MEXICO  
SUBDIVISION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,  
Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS. -- As used in the New Mexico  
Subdivision Act:

A. "immediate family member" means a husband, wife,  
father, stepfather, mother, stepmother, brother, stepbrother,  
sister, stepsister, son, stepson, daughter, stepdaughter,  
grandson, stepgrandson, granddaughter, stepgranddaughter, nephew  
and niece, whether related by natural birth or adoption;

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1 B. "lease" means to lease or offer to lease land;

2 C. "parcel" means land capable of being described by  
3 location and boundaries and not dedicated for public or common  
4 use;

5 D. "person" means any individual, estate, trust,  
6 receiver, cooperative association, club, corporation, company,  
7 firm, partnership, joint venture, syndicate or other entity;

8 E. "final plat" means a map, chart, survey, plan or  
9 replat certified by a licensed, registered land surveyor  
10 containing a description of the subdivided land with ties to  
11 permanent monuments prepared in a form suitable for filing of  
12 record;

13 F. "flood plain" means an area identified as a flood  
14 plain on the current federal emergency management agency's flood  
15 insurance rate map;

16 [~~F.~~] G. "preliminary plat" means a map of a proposed  
17 subdivision showing the character and proposed layout of the  
18 subdivision and the existing conditions in and around it and  
19 [~~need not be based upon an accurate and detailed survey of the~~  
20 ~~land~~] shall be based upon a survey of the land;

21 [~~G.~~] H. "sell" means to sell or offer to sell land;

22 [~~H.~~] I. "subdivide" means to divide a surface area  
23 of land into a subdivision;

24 [~~I.~~] J. "subdivider" means any person who creates or  
25 who has created a subdivision individually or as part of a

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1 common promotional plan or any person engaged in the sale, lease  
2 or other conveyance of subdivided land; however, "subdivider"  
3 does not include any duly licensed real estate broker or  
4 salesperson acting on another's account;

5 [J.] K. "subdivision" means the division of a  
6 surface area of land [~~including land within a previously~~  
7 ~~approved subdivision~~] into two or more parcels for the purpose  
8 of sale, lease or other conveyance or for building development,  
9 whether immediate or future; but "subdivision" does not include:

10 (1) the [~~sale, lease or other conveyance~~]  
11 division of any parcel that is thirty-five acres or larger in  
12 size within any twelve-month period, provided that the land has  
13 been used primarily and continuously for agricultural purposes,  
14 in accordance with Section 7-36-20 NMSA 1978, for the preceding  
15 three years;

16 (2) the sale or lease of apartments, offices,  
17 stores or similar space within a building;

18 (3) the division of land within the boundaries  
19 of a municipality;

20 (4) the division of land in which only gas,  
21 oil, mineral or water rights are severed from the surface  
22 ownership of the land;

23 (5) the division of land created by court order  
24 where the order creates no more than one parcel per party;

25 (6) the division of land for grazing or farming

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1 activities; provided the land continues to be used for grazing  
2 or farming activities;

3 (7) the division of land resulting only in the  
4 alteration of parcel boundaries where parcels are altered for  
5 the purpose of increasing or reducing the size of contiguous  
6 parcels and where the number of parcels is not increased;

7 (8) the division of land to create burial plots  
8 in a cemetery;

9 (9) the division of land to create a parcel  
10 that is sold or donated as a gift to an immediate family member;  
11 however, this exception shall be limited to allow the seller or  
12 donor to sell or give no more than one parcel per tract of land  
13 per immediate family member;

14 (10) the division of land created to provide  
15 security for mortgages, liens or deeds of trust; provided that  
16 the division of land is not the result of a seller-financed  
17 transaction;

18 (11) the ~~[sale, lease or other conveyance]~~  
19 division of land that creates no parcel smaller than one hundred  
20 forty acres;

21 (12) the division of land to create a parcel  
22 that is donated to any trust or nonprofit corporation granted an  
23 exemption from federal income tax, as described in Section 501  
24 (c)(3) of the United States Internal Revenue Code of 1986, as  
25 amended; school, college or other institution with a defined

. 116054. 2

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1 curriculum and a student body and faculty that conducts classes  
2 on a regular basis; or [~~to any~~] church or group organized for  
3 the purpose of divine worship, religious teaching or other  
4 specifically religious activity; [~~or~~]

5 (13) the [~~sale, lease or other conveyance~~]  
6 division of a single parcel from a tract of land [~~except from a~~  
7 ~~tract within a previously approved subdivision~~] within any  
8 five-year period; [~~provided that a second or subsequent sale,~~  
9 ~~lease or other conveyance from the same tract of land within~~  
10 ~~five years of the first sale, lease or other conveyance shall be~~  
11 ~~subject to the provisions of the New Mexico Subdivision Act;~~]  
12 provided [~~further~~] that a survey shall be filed with the county  
13 clerk indicating the five-year holding period for further  
14 divisions for both the original tract and the newly created  
15 tract;

16 (14) the division of a parcel from a tract of  
17 land for purposes other than for residential development or  
18 occupancy; or

19 (15) the division of land to create a parcel to  
20 be used for facilities to gather, process or transport gas, oil,  
21 minerals or water, or to distribute public utilities.

22 [K.] L. "terrain management" means the control of  
23 floods, drainage and erosion and measures required for adapting  
24 proposed development to existing soil characteristics and  
25 topography;

1           ~~[L.]~~ M. "time of purchase, lease or other  
2 conveyance" means the time of signing any document obligating  
3 the person signing the document to purchase, lease or otherwise  
4 acquire a legal interest in land;

5           ~~[M.]~~ N. "common promotional plan" means any plan or  
6 scheme of operation, undertaken by a single subdivider or a  
7 group of subdividers acting in concert, to offer for sale or  
8 lease parcels of land where such land is either contiguous or  
9 ~~[part of the same area of land or is known]~~ designated or  
10 advertised as a common unit or by a common name;

11           ~~[N.]~~ O. "type-one subdivision" means any subdivision  
12 containing five hundred or more parcels, any one of which is  
13 less than ten acres in size;

14           ~~[O.]~~ P. "type-two subdivision" means any subdivision  
15 containing not fewer than twenty-five but not more than four  
16 hundred ninety-nine parcels, any one of which is less than ten  
17 acres in size;

18           ~~[P.]~~ Q. "type-three subdivision" means any  
19 subdivision containing not more than twenty-four parcels, any  
20 one of which is less than ten acres in size;

21           ~~[Q.]~~ R. "type-four subdivision" means any subdivision  
22 containing twenty-five or more parcels, each of which is ten  
23 acres or more in size; and

24           ~~[R.]~~ S. "type-five subdivision" means any  
25 subdivision containing not more than twenty-four parcels, each

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1 of which is ten acres or more in size. "

2 Section 2. Section 47-6-8 NMSA 1978 (being Laws 1973,  
3 Chapter 348, Section 8, as amended) is amended to read:

4 "47-6-8. REQUIREMENTS PRIOR TO SALE, LEASE OR OTHER  
5 CONVEYANCE. --It is unlawful to sell, lease or otherwise convey  
6 land within a subdivision before the following conditions have  
7 been met:

8 A. the final plat has been approved by the board of  
9 county commissioners and has been filed with the clerk of the  
10 county in which the subdivision is located. Where a subdivision  
11 lies within more than one county, the final plat shall be  
12 approved by the board of county commissioners of each county in  
13 which the subdivision is located and shall be filed with the  
14 county clerk of each county in which the subdivision is located;  
15 and

16 [~~B. the subdivider has furnished the board of county~~  
17 ~~commissioners a sample copy of his sales contracts, leases and~~  
18 ~~any other documents that will be used to convey an interest in~~  
19 ~~the subdivided land; and~~

20 B. all corners of all parcels and blocks within  
21 a subdivision have been permanently marked with metal stakes in  
22 the ground [~~and a reference stake placed beside one corner of~~  
23 ~~each parcel~~]. "

24 Section 3. Section 47-6-9 NMSA 1978 (being Laws 1973,  
25 Chapter 348, Section 9, as amended) is amended to read:

. 116054. 2

1 "47-6-9. SUBDIVISION REGULATION-- COUNTY AUTHORITY. --

2 A. The board of county commissioners of each county  
3 shall regulate subdivisions within the county's boundaries. In  
4 regulating subdivisions, the board of county commissioners of  
5 each county shall adopt regulations setting forth the county's  
6 requirements for:

7 (1) preliminary and final subdivision plats,  
8 including their content and format;

9 (2) [~~quantifying the maximum annual~~] water  
10 requirements [~~of~~] for subdivisions; [~~including water for indoor~~  
11 ~~and outdoor domestic uses~~];

12 (3) ~~assessing water availability to meet the~~  
13 ~~maximum annual water requirements of subdivisions~~;

14 (4) ~~water conservation measures~~;

15 (5) ~~water of an acceptable quality for human~~  
16 ~~consumption and for protecting the water supply from~~  
17 ~~contamination~~;

18 (6) [~~3~~] (3) liquid waste disposal;

19 [~~7~~] (4) solid waste disposal;

20 [~~8~~] (5) legal access to each parcel;

21 [~~9~~ ~~sufficient and~~] (6) adequate roads to  
22 each parcel, including ingress and egress for emergency  
23 vehicles;

24 [~~10~~] (7) utility easements to each parcel;

25 [~~11~~] (8) terrain management;

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- 1                    [~~(12)~~] (9)    phased development;
- 2                    [~~(13)~~] (10)    protecting registered cultural
- 3 properties, registered archaeological sites and unmarked
- 4 burials, as required by the Cultural Properties Act;
- 5                    [~~(14)~~] (11)    specific information to be
- 6 contained in a subdivider's disclosure statement in addition to
- 7 that required in Section 47-6-17 NMSA 1978;
- 8                    [~~(15)~~] (12)    reasonable fees approximating the
- 9 cost to the county of determining compliance with the New Mexico
- 10 Subdivision Act and county subdivision regulations while passing
- 11 upon subdivision plats;
- 12                    [~~(16)~~] (13)    a summary procedure for reviewing
- 13 certain type-three and all type-five subdivisions as provided in
- 14 Section 47-6-11 NMSA 1978;
- 15                    [~~(17)~~] (14)    recording all conveyances of
- 16 parcels with the county clerk;
- 17                    [~~(18)~~] (15)    financial security to assure the
- 18 completion of all improvements that the subdivider proposes to
- 19 build or to maintain;
- 20                    [~~(19)~~] (16)    fencing subdivided land, where
- 21 appropriate, in conformity with Section 77-16-1 NMSA 1978, which
- 22 places the duty on the purchaser, lessee or other person
- 23 acquiring an interest in the subdivided land to fence out
- 24 livestock and
- 25                    (20)    any other matter relating to subdivisions

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1 that the board of county commissioners feels is necessary to  
2 promote health, safety or the general welfare, as specified in  
3 that county's subdivision regulations.

4 B. Subsection A of this section does not preempt the  
5 authority of any state agency to regulate or perform any  
6 activity that it is required or authorized by law to perform

7 [~~C. The following counties shall adopt regulations~~  
8 ~~pursuant to this section on or before July 1, 1996: Bernalillo,~~  
9 ~~Dona Ana and Santa Fe.~~

10 ~~D. All remaining counties shall adopt regulations~~  
11 ~~pursuant to this section on or before July 1, 1997.~~

12 E.] C. Nothing in the New Mexico Subdivision Act  
13 shall be construed to limit the authority of counties to adopt  
14 subdivision regulations with requirements that are more  
15 stringent than the requirements set forth in the New Mexico  
16 Subdivision Act, provided the county has adopted a comprehensive  
17 plan in accordance with Section 3-21-5 NMSA 1978 and those  
18 subdivision regulations are consistent with [~~such~~] that plan. "

19 Section 4. Section 47-6-11 NMSA 1978 (being Laws 1973,  
20 Chapter 348, Section 11, as amended) is amended to read:

21 "47-6-11. PRELIMINARY PLAT APPROVAL--SUMMARY REVIEW. --

22 A. Preliminary plats shall be submitted for  
23 type-one, type-two, type-three, except type-three subdivisions  
24 that are subject to review under summary procedure as set forth  
25 in Subsection I of this section, and type-four subdivisions.

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1                   B. Prior to approving the preliminary plat, the  
2 board of county commissioners of the county in which the  
3 subdivision is located shall require that the subdivider furnish  
4 documentation [of:

5                   ~~(1) water sufficient in quantity to fulfill the~~  
6 ~~maximum annual water requirements of the subdivision, including~~  
7 ~~water for indoor and outdoor domestic uses;~~

8                   ~~(2) water of an acceptable quality for human~~  
9 ~~consumption and measures to protect the water supply from~~  
10 ~~contamination;~~

11                   ~~(3) the means of liquid waste disposal for the~~  
12 ~~subdivision;~~

13                   ~~(4) the means of solid waste disposal for the~~  
14 ~~subdivision;~~

15                   ~~(5) satisfactory roads to each parcel,~~  
16 ~~including ingress and egress for emergency vehicles, and utility~~  
17 ~~easements to each parcel;~~

18                   ~~(6) terrain management to protect against~~  
19 ~~flooding, inadequate drainage and erosion; and~~

20                   ~~(7) protections for cultural properties,~~  
21 ~~archaeological sites and unmarked burials that may be impacted~~  
22 ~~directly by the subdivision, as required by the Cultural~~  
23 ~~Properties Act] showing compliance with county subdivision~~  
24 ~~regulations provided for in Section 47-6-9 NMSA 1978.~~

25                   C. In addition to the requirements of Subsection B

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1 of this section, prior to approving the preliminary plat, the  
2 board of county commissioners of the county in which the  
3 subdivision is located shall:

4 (1) determine whether the subdivider can  
5 fulfill the proposals contained in his disclosure statement  
6 required by Section 47-6-17 NMSA 1978; and

7 (2) determine whether the subdivision will  
8 conform with the New Mexico Subdivision Act and the county's  
9 subdivision regulations.

10 D. The board of county commissioners shall not  
11 approve the preliminary plat if the subdivider cannot reasonably  
12 demonstrate that he can fulfill the requirements of Subsections  
13 B and C of this section.

14 E. Any subdivider submitting a preliminary plat for  
15 approval shall submit sufficient information to the board of  
16 county commissioners to permit the board to determine whether  
17 the subdivider can fulfill the requirements of Subsections B and  
18 C of this section.

19 F. In determining whether a subdivider can fulfill  
20 the requirements of Subsections B and C of this section, the  
21 board of county commissioners shall, within ten days after the  
22 preliminary plat is deemed complete, request opinions from:

23 (1) the state engineer as to [~~determine~~  
24 ~~(a)~~] whether the subdivider can [~~furnish~~  
25 ~~water sufficient in quantity to fulfill the maximum annual~~]

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1 fulfill water requirements [~~of the~~] as provided in that county's  
2 subdivision [~~including water for indoor and outdoor domestic~~  
3 ~~uses; and~~

4 (b) ~~whether the subdivider can fulfill~~  
5 ~~the proposals in his disclosure statement concerning water,~~  
6 ~~excepting water quality]~~ regulations;

7 (2) the department of environment as to  
8 [~~determine~~]:

9 (a) whether the subdivider can [~~furnish~~  
10 ~~water of an acceptable quality for human consumption and~~  
11 ~~measures to protect the water supply from contamination]~~ fulfill  
12 water requirements in conformity with state regulations  
13 promulgated pursuant to the Environmental Improvement Act;

14 (b) whether there are sufficient liquid  
15 and solid waste disposal facilities to fulfill the requirements  
16 of the county subdivision regulations in conformity with state  
17 regulations promulgated pursuant to the Environmental  
18 Improvement Act, the Water Quality Act and the Solid Waste Act;  
19 and

20 (c) whether the subdivider can fulfill  
21 the proposals contained in his disclosure statement concerning  
22 water quality and concerning liquid and solid waste disposal  
23 facilities;

24 (3) the state highway and transportation  
25 department as to [~~determine~~] whether the subdivider can fulfill

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1 the state highway access requirements for the subdivision in  
2 conformity with state regulations promulgated pursuant to  
3 Section 67-3-16 NMSA 1978;

4 (4) the soil and water conservation district as  
5 to [~~determine~~]:

6 (a) whether the subdivider [~~can furnish~~]  
7 has provided for terrain management sufficient to protect  
8 against flooding, inadequate drainage and erosion; and

9 (b) whether the subdivider can fulfill  
10 the proposals contained in his disclosure statement concerning  
11 terrain management; and

12 (5) such other public agencies as the county by  
13 regulation, deems necessary, [~~such as local school districts and~~  
14 ~~fire districts~~] to determine whether there are adequate  
15 facilities to accommodate the proposed subdivision.

16 G. If, in the opinion of each appropriate public  
17 agency, a subdivider can fulfill the requirements of Subsection  
18 F of this section, [~~then~~] the board of county commissioners  
19 shall weigh these opinions in determining whether to approve the  
20 preliminary plat at a public hearing to be held in accordance  
21 with Section 47-6-14 NMSA 1978.

22 H. If, in the opinion of the appropriate public  
23 agency, a subdivider cannot fulfill the requirements of  
24 Subsection F of this section or if the appropriate public agency  
25 does not have sufficient information upon which to base an

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1 opinion on any one of these subjects, the subdivider shall be  
2 notified of this fact by the board of county commissioners, and  
3 the procedure set out below shall be followed:

4 (1) if the appropriate public agency has  
5 rendered an adverse opinion, the board of county commissioners  
6 shall give the subdivider a copy of the opinion;

7 (2) the subdivider shall be given thirty days  
8 from the date of notification to submit additional information  
9 to the public agency through the board of county commissioners;  
10 and

11 (3) the public agency shall have thirty days  
12 from the date the subdivider submits additional information to  
13 change its opinion, or issue a favorable opinion when it has  
14 withheld one because of insufficient information. No more than  
15 thirty days following the date of the expiration of the  
16 thirty-day period, during which the public agency reviews any  
17 additional information submitted by the subdivider, the board of  
18 county commissioners shall hold a public hearing in accordance  
19 with Section 47-6-14 NMSA 1978 to determine whether to approve  
20 the preliminary plat. Where the public agency has rendered an  
21 adverse opinion, the subdivider has the burden of showing that  
22 the adverse opinion is incorrect either as to factual or legal  
23 matters.

24 I. If a type-three subdivision contains five or  
25 fewer parcels of land, and unless the land within the

1 subdivision has been previously identified in the county's  
2 comprehensive plan, as amended or supplemented, or zoning  
3 ordinances as an area subject to unique circumstances or  
4 conditions that require additional review:

5 (1) if the smallest parcel is not less than  
6 three acres in size, the board of county commissioners shall use  
7 the same summary procedure for reviewing the subdivision as the  
8 board uses for reviewing type-five subdivisions; or

9 (2) if the smallest parcel is less than three  
10 acres in size, the board of county commissioners may use the  
11 same summary procedure for reviewing the subdivision as the  
12 board uses for reviewing type-five subdivisions.

13 J. Prior to approving the final plat of a type-five  
14 subdivision, the board of county commissioners of the county in  
15 which the subdivision is located shall:

16 (1) determine whether the subdivider can  
17 fulfill the proposals contained in his disclosure statement  
18 required by Section 47-6-17 NMSA 1978; and

19 (2) determine whether the subdivision conforms  
20 with the New Mexico Subdivision Act and the county's subdivision  
21 regulations.

22 K. The board of county commissioners shall not  
23 approve the final plat of any type-five subdivision if the  
24 subdivider cannot reasonably demonstrate that he can fulfill the  
25 requirements of Subsection J of this section.

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1           L. Any subdivider submitting a plat of a type-five  
2 subdivision shall submit sufficient information to the board of  
3 county commissioners to permit the board to determine whether  
4 the subdivider can fulfill the requirements of Subsection J of  
5 this section.

6           M. The board of county commissioners shall by  
7 regulation establish a procedure for summary review for certain  
8 type-three subdivisions, as provided in Subsection I of this  
9 section, and all type-five subdivisions. If the board of county  
10 commissioners fails to adopt criteria for summary review, the  
11 board of county commissioners shall approve the plat if it  
12 complies with Sections 47-6-3 and 47-6-4 NMSA 1978 within the  
13 time limitation set forth in Section 47-6-22 NMSA 1978. The  
14 board of county commissioners may delegate to any county  
15 administrative officer or planning commission member the  
16 authority to approve any subdivision under summary review.  
17 Approval by summary review is conclusive evidence of the  
18 approval of the board of county commissioners. "

19           Section 5. Section 47-6-11.2 NMSA 1978 (being Laws 1995,  
20 Chapter 212, Section 13) is amended to read:

21           "47-6-11.2. WATER PERMIT REQUIRED FOR FINAL PLAT  
22 APPROVAL. -- [A. ~~Until July 1, 1997, before approving the final~~  
23 ~~plat for a subdivision containing twenty or more parcels, any~~  
24 ~~one of which is two acres or less in size, the board of county~~  
25 ~~commissioners shall require that the subdivider provide a copy~~

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1 ~~of a permit obtained from the state engineer, issued pursuant to~~  
2 ~~Section 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, or if the~~  
3 ~~subdivision is located within a declared underground water~~  
4 ~~basin, provide a copy of a permit obtained from the state~~  
5 ~~engineer issued pursuant to those sections or to Section 72-12-3~~  
6 ~~or 72-12-7 NMSA 1978 for the subdivision water use. In acting~~  
7 ~~on the permit application, the state engineer shall determine~~  
8 ~~whether the amount of water permitted is sufficient in quantity~~  
9 ~~to fulfill the maximum annual water requirements of the~~  
10 ~~subdivision, including water for indoor and outdoor domestic~~  
11 ~~uses. The board of county commissioners shall not approve the~~  
12 ~~final plat unless the state engineer has so issued a permit for~~  
13 ~~the subdivision water use.~~

14           B. ~~On or after July 1, 1997]~~ Before approving the  
15 final plat for a subdivision containing twenty or more parcels,  
16 any one of which is two acres or less in size, the board of  
17 county commissioners may require that the subdivider provide a  
18 copy of a permit obtained from the state engineer, issued  
19 pursuant to Section 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, or if  
20 the subdivision is located within a declared underground water  
21 basin, provide a copy of a permit obtained from the state  
22 engineer issued pursuant to those sections or to Section 72-12-3  
23 or 72-12-7 NMSA 1978 for the subdivision water use. In acting  
24 on the permit application, the state engineer shall determine  
25 whether the amount of water permitted is sufficient [in

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1 ~~quantity~~] to fulfill the [~~maximum annual~~] county's water  
2 requirements. [~~of the subdivision, including water for indoor~~  
3 ~~and outdoor domestic uses. The board of county commissioners~~  
4 ~~may elect not to approve the final plat if the state engineer~~  
5 ~~has not issued a permit for the subdivision water use]~~ The  
6 state engineer shall have thirty days to act upon the water  
7 permit. If after thirty days the state engineer has not acted  
8 upon the water permit, the board of county commissioners may  
9 approve the final plat."

10 Section 6. Section 47-6-14 NMSA 1978 (being Laws 1973,  
11 Chapter 348, Section 14, as amended) is amended to read:

12 "47-6-14. PUBLIC HEARINGS ON PRELIMINARY PLATS. --The board  
13 of county commissioners shall adhere to the following  
14 requirements concerning public hearings on preliminary plats.

15 A. Notice of the hearing shall be given at least  
16 twenty-one days prior to the hearing date and shall state:

- 17 (1) the subject of the hearing;
- 18 (2) the time and place of the hearing;
- 19 (3) the manner for interested persons to  
20 present their views; and
- 21 (4) the place and manner for interested persons  
22 to secure copies of any favorable or adverse opinion and of the  
23 subdivider's proposal. The board of county commissioners may  
24 impose a reasonable charge upon the person making the request  
25 for the costs of reproducing and mailing the opinions and

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1 proposals.

2 B. The notice shall be published in a newspaper of  
3 general circulation in the county.

4 C. Reasonable effort shall be made to give notice to  
5 all persons who have made a written request to the board of  
6 county commissioners for advance notice of its hearings. Notice  
7 shall also be given to any public agency that issued an opinion  
8 or withheld an opinion on the basis of insufficient information.

9 D. Public hearings on preliminary plats shall be  
10 held within thirty days from the receipt of all requested public  
11 agency opinions where all such opinions are favorable or within  
12 thirty days from the date all public agencies complete their  
13 review of any additional information submitted by the subdivider  
14 pursuant to Section 47-6-11 NMSA 1978. If the board of county  
15 commissioners does not receive a requested opinion within the  
16 thirty-day period, the board shall proceed.

17 E. At the hearing, the board of county commissioners  
18 shall allow all interested persons a reasonable opportunity to  
19 submit data, views or arguments, orally or in writing, and to  
20 examine witnesses testifying at the hearing.

21 F. The board of county commissioners shall approve,  
22 approve with conditions or disapprove the preliminary plat  
23 within thirty days of the public hearing at a public meeting of  
24 the board of county commissioners. "

25 Section 7. Section 47-6-17 NMSA 1978 (being Laws 1973,

. 116054. 2

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1 Chapter 348, Section 17, as amended) is amended to read:

2 "47-6-17. DISCLOSURE. --

3 A. Prior to selling, leasing or otherwise conveying  
4 any land in a subdivision, the subdivider shall disclose in  
5 writing such information as the board of county commissioners  
6 requires, by regulation, to permit the prospective purchaser,  
7 lessee or other person acquiring an interest in subdivided land  
8 to make an informed decision about the purchase, lease or other  
9 conveyance of the land.

10 B. The disclosure statement for subdivisions with  
11 not fewer than five and not more than one hundred parcels shall  
12 contain at least the following information:

13 (1) the name of the subdivision;

14 (2) the name and address of the subdivider and  
15 the name and address of the person in charge of sales or leasing  
16 in New Mexico;

17 (3) the total acreage of the subdivision, both  
18 present and anticipated;

19 (4) the size of the largest and smallest  
20 parcels offered for sale, lease or other conveyance within the  
21 subdivision and the proposed range of selling or leasing prices,  
22 including financing terms;

23 (5) the distance from the nearest town to the  
24 subdivision and the route over which this distance is computed;

25 (6) the name and address of the person who is

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1 recorded as having legal and equitable title to the land offered  
2 for sale, lease or other conveyance;

3 (7) a statement of the condition of title,  
4 including any encumbrances;

5 (8) a statement of all restrictions or  
6 reservations of record that subject the subdivided land to any  
7 conditions affecting its use or occupancy;

8 (9) the name and address of the escrow agent,  
9 if any;

10 (10) a statement as to availability and cost of  
11 public utilities;

12 (11) a statement describing [~~the maximum~~  
13 ~~annual~~] water requirements [~~of~~] for the subdivision, [~~including~~  
14 ~~water for indoor and outdoor domestic uses, and describing the~~  
15 ~~availability of water to meet the maximum annual water~~  
16 ~~requirements~~] pursuant to county regulations and a statement  
17 describing the availability of water to meet those county  
18 regulations;

19 (12) a statement describing the quality of  
20 water, if any, in the subdivision available for human  
21 consumption;

22 (13) a description of the means of liquid waste  
23 disposal for the subdivision;

24 (14) a description of the means of solid waste  
25 disposal for the subdivision;

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- 1 (15) a description of the means of water,  
2 delivery, if any, within the subdivision;
- 3 (16) the estimated average depth to water  
4 within the subdivision if water is available only from  
5 subterranean sources;
- 6 (17) a description of access to the  
7 subdivision;
- 8 (18) a statement disclosing whether the roads  
9 and other improvements within the subdivision will be maintained  
10 by the county, the subdivider or an association of lot owners  
11 and what measures have been taken to ensure that maintenance  
12 will take place;
- 13 (19) a description of the subdivider's  
14 provisions for terrain management;
- 15 (20) a summary [~~approved by the issuing state~~  
16 ~~agency~~] of the opinions, if any, [~~whether favorable or adverse~~]  
17 provided by state agencies to the board of county commissioners  
18 concerning any one of the points listed above;
- 19 (21) a statement that the subdivider shall  
20 record the deed, real estate contract, lease or other instrument  
21 conveying an interest in subdivided land with the appropriate  
22 county clerk within thirty days of the signing of such  
23 instrument by the purchaser, lessee or other person acquiring an  
24 interest in the land; and
- 25 (22) a statement advising the purchaser, lessee

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1 or other person acquiring an interest in subdivided land that  
2 building permits, wastewater permits or other use permits are  
3 required to be issued by state or county officials before  
4 improvements are constructed and that [further] he is advised to  
5 investigate the availability of such permits before purchase,  
6 lease or other conveyance and whether these are requirements for  
7 construction of additional improvements before he may occupy the  
8 property and

9 (23) such other information as the board of  
10 county commissioners may require, as specified in that county's  
11 subdivision regulations.

12 C. The disclosure statement for subdivisions with  
13 one hundred or more parcels shall contain all of the information  
14 required in Subsection B of this section as well as the  
15 following information:

16 (1) a statement of any activities or conditions  
17 adjacent to or nearby the subdivision that would subject the  
18 subdivided land to any unusual conditions affecting its use or  
19 occupancy;

20 (2) a description of all recreational  
21 facilities, actual and proposed, in the subdivision;

22 (3) a statement as to the availability of:

23 (a) fire protection;

24 (b) police protection;

25 (c) public schools for the inhabitants of

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1 the subdivision, including a statement concerning the proximity  
2 of the nearest elementary and secondary schools;

3 (d) hospital facilities;

4 (e) shopping facilities; and

5 (f) public transportation; and

6 (4) a statement setting forth the projected  
7 dates upon which any of the items mentioned in this section for  
8 which the subdivider has responsibility will be completed if  
9 they are not yet completed.

10 D. Disclosure statements shall be in the form that  
11 the board of county commissioners, after consultation with the  
12 attorney general, may require by regulation. The board of  
13 county commissioners may require by regulation that disclosure  
14 statements be printed in both English and Spanish. The form of  
15 disclosure statements, insofar as possible, shall be uniform for  
16 all counties.

17 E. Any subdivider who has satisfied the disclosure  
18 requirement of the federal Interstate Land Sales Full Disclosure  
19 Act may submit his approved statement of record in lieu of the  
20 disclosure statement required by the New Mexico Subdivision Act.  
21 However, any information required in the New Mexico Subdivision  
22 Act and not covered in the subdivider's statement of record  
23 shall be attached to the statement of record.

24 F. It is unlawful to sell, lease or otherwise convey  
25 land in a subdivision until:

1 (1) the required disclosure statement has been  
2 filed with the county clerk, the board of county commissioners  
3 and the attorney general's office; and

4 (2) the prospective purchaser, lessee or other  
5 person acquiring an interest in the subdivided land has been  
6 given a copy of the disclosure statement. "

7 Section 8. Section 47-6-19 NMSA 1978 (being Laws 1973,  
8 Chapter 348, Section 19, as amended) is amended to read:

9 "47-6-19. ROAD DEVELOPMENT. --

10 A. Roads within a subdivision shall be constructed  
11 only on a schedule approved by the board of county  
12 commissioners. In approving or disapproving a subdivider's road  
13 construction schedule, the board of county commissioners shall  
14 consider:

15 (1) the proposed use of the subdivision;

16 (2) the period of time before the roads will  
17 receive substantial use;

18 (3) the period of time before construction of  
19 homes will commence on the portion of the subdivision serviced  
20 by the road;

21 (4) the county regulations governing phased  
22 development; and

23 (5) the needs of prospective purchasers,  
24 lessees and other persons acquiring an interest in subdivided  
25 land in viewing the land within the subdivision.

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1           B. All proposed roads shall conform to minimum  
2 county safety standards.

3           C. The board of county commissioners shall not  
4 approve the grading or construction of roads unless [~~and until~~]  
5 the subdivider can reasonably demonstrate that the roads to be  
6 constructed will receive use and that the roads are required to  
7 provide access to parcels or improvements within twenty-four  
8 months from the date of construction of the road.

9           ~~[D. It is unlawful for the subdivider to grade or  
10 otherwise commence construction of roads unless the construction  
11 conforms to the schedule of road development approved by the  
12 board of county commissioners.]~~

13           D. If a subdivider proposes the construction of a  
14 county road to provide access to a subdivision, the construction  
15 of that road shall not begin unless it conforms to county  
16 subdivision regulations. "

17           Section 9. Section 47-6-20 NMSA 1978 (being Laws 1973,  
18 Chapter 348, Section 20, as amended) is amended to read:

19           "47-6-20. PUBLIC AGENCIES REQUIRED TO PROVIDE COUNTIES  
20 WITH INFORMATION. --

21           A. Any public agency receiving a request from the  
22 board of county commissioners for an opinion pursuant to Section  
23 47-6-11 NMSA 1978 shall furnish the board with the requested  
24 opinion within [~~the time period set forth in Subsection A of~~  
25 ~~Section 47-6-22 NMSA 1978]~~ thirty days of the receipt of the

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1 county's request. The board of county commissioners shall  
2 furnish the appropriate public agency with all relevant  
3 information that the board has received from the subdivider on  
4 the subject for which the board is seeking an opinion. If the  
5 public agency does not have sufficient information upon which to  
6 base an opinion, the public agency shall notify the board of  
7 this fact within fifteen days of receipt of the request for an  
8 opinion by the county.

9 B. All opinion requests mailed by the board of  
10 county commissioners shall be by certified mail "return receipt  
11 requested". Boards of county commissioners delivering opinion  
12 requests shall obtain receipts showing the day the opinion  
13 request was received by the particular public agency. "

14 Section 10. Section 47-6-22 NMSA 1978 (being Laws 1973,  
15 Chapter 348, Section 22, as amended) is amended to read:

16 "47-6-22. TIME LIMIT ON ADMINISTRATIVE ACTION. --

17 A. All opinions required of public agencies shall be  
18 furnished to the board of county commissioners within thirty  
19 days after the public agencies receive the written request and  
20 accompanying information from the board of county commissioners.  
21 If the board of county commissioners does not receive a  
22 requested opinion within the thirty-day period, the board shall  
23 proceed in accordance with its own best judgment concerning the  
24 subject of the opinion request. The failure of a public agency  
25 to provide an opinion when requested by the board of county

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1 commissioners does not indicate that the subdivider's provisions  
2 concerning the subject of the opinion request were acceptable or  
3 unacceptable or adequate or inadequate.

4 B. Final plats submitted to the board of county  
5 commissioners for approval shall be approved or disapproved at a  
6 public meeting of the board of county commissioners within  
7 thirty days [~~of the date the final plat is deemed complete~~] from  
8 submission of the plat.

9 C. If the board of county commissioners does not act  
10 upon a final plat within the required period of time, the  
11 subdivider shall give the board of county commissioners written  
12 notice of its failure to act. If the board of county  
13 commissioners fails to approve or reject the final plat within  
14 thirty days, the board of county commissioners shall, upon  
15 demand by the subdivider, issue a certificate stating that the  
16 final plat has been approved. "

17 Section 11. Section 47-6-23 NMSA 1978 (being Laws 1973,  
18 Chapter 348, Section 23, as amended) is amended to read:

19 "47-6-23. RIGHT OF INSPECTION--RESCISSION.--If the  
20 purchaser, lessee or other person acquiring an interest in the  
21 subdivided land has not inspected his parcel prior to the time  
22 of purchase, lease or other conveyance, the purchase, lease or  
23 other conveyancing agreement shall contain a provision giving  
24 the purchaser, lessee or other person acquiring an interest in  
25 the subdivided land [~~six months~~] thirty days within which to

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1 personally inspect his parcel. After making the personal  
2 inspection within the [~~six-month~~] thirty-day period, the  
3 purchaser, lessee or other person acquiring an interest in the  
4 subdivided land has the right to rescind the purchase, lease or  
5 other conveyancing agreement and receive a refund of all funds  
6 paid on the transaction to the seller, lessor or other conveyor  
7 of subdivided land when merchantable title is revested in the  
8 seller, lessor or other conveyor of subdivided land. Notice of  
9 such rescission to the seller, lessor or other conveyor of  
10 subdivided land shall be made in writing and shall be given  
11 within three days of the date of personal inspection."

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